Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Reform	)	WT Docket No. 10-208
	)	
Mobility Fund	)	

JOINT COMMENTS OF
THE STANDING ROCK SIOUX TRIBE
AND
STANDING ROCK TELECOMMUNICATIONS, INC.
ON THE COMMISSION'S
FURTHER INQUIRY INTO TRIBAL ISSUES RELATING TO
ESTABLISHMENT OF A MOBILITY FUND

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Submitted May 4, 2011

I.   Introduction

We commend the FCC's effort in this process to focus on the needs of tribes, tribal members, and residents of Indian reservations and communities – who are among the least served by 21st-century telecommunications networks. As the National Congress of American Indians ("NCAI") commented, "Traditional economic drivers have proven ineffective in bringing telecommunications services to Indian country." NCAI Comments, at 9 (Dec. 16, 2010). The high build-out costs and the limited financial resources of many residents of Indian country have left our communities out. Targeting financial support to tribal lands for this infrastructure is a matter that affects the very health and well-being of our residents – including access to health and emergency care, educational opportunities, and economic development. In short, expanding modern telecommunications networks into tribal communities will dramatically change lives for the better in Indian country, and in some cases, will save lives.

We strongly support the establishment of a separate Tribal Mobility Fund, to support telecommunications deployment on tribal lands. And we applaud the FCC for seeking comments on how best to tailor such a fund to serve the needs of Indian country. At the same time, it is our view that a reverse-auction mechanism would not work for Indian country, and that an alternative allocation method should be considered for a separate Tribal Mobility Fund track. In addition, we urge the FCC to support the efforts of tribes – like Standing Rock – that have already taken initiative as governments to launch mobile infrastructure projects and to ensure that such tribes are allowed to participate fully in the Tribal Mobility Fund.

II.   The Standing Rock Sioux Tribe and Standing Rock Telecommunications, Inc.

A. The Standing Rock Sioux Tribe.

The Standing Rock Sioux Tribe ("SRST" or the "Tribe") is a federally-recognized Indian tribe, with approximately 9,000 members. The Standing Rock Reservation is a sparsely populated rural Reservation that lies partly in South Dakota and partly in North Dakota, and covers some 2.3 million acres. The Reservation's population is approximately 8,500 people, including both Tribal members and non-member residents. The population density on the Reservation is 3.7 persons per square mile in the North Dakota portion of our Reservation, and 1.7 persons per square mile in the South Dakota portion of our Reservation. Despite some recent gains, our Reservation continues to suffer from chronic poverty and high unemployment, with a persistent unemployment rate above 50%. Our rural location and lack of adequate infrastructure of all kinds – including roads, water and sanitation as well as telecommunications – contribute to the economic challenges faced by the Tribe.

B. Standing Rock Telecommunications.

With mobile service severely lacking on the Reservation, the Tribe recently took it upon itself to launch its own Tribal telecommunications company and network, purchasing bandwidth and financing the construction of necessary infrastructure, including base station towers. FCC Chairman Genachowski highlighted and applauded the Tribe's initiative in his March 2010 remarks to the National Congress of American Indians.

Standing Rock Telecommunications, Inc. ("SRTI") is 100% owned by the Tribe. In August 2010, SRTI was designated an "Eligible Telecommunications Carrier ("ETC") for a portion of the Reservation. A related jurisdictional issue, along with SRTI's application for ETC

designation for other portions of the Reservation, remains pending with the FCC as of the date of this filing.

SRTI has invested in the basic telecommunications infrastructure that was lacking on the Reservation – starting with 17 cellular towers. SRTI initially launched mobile service in 2010, and today serves over 900 wireless customers on the Reservation. SRTI's services provide a vast improvement over the prior wireless service on the Reservation in terms of quality and coverage. But SRTI recognizes that we have just begun our efforts and that more is needed to provide the full measure of high quality telecommunications – including broadband – that the Standing Rock Reservation needs and deserves.

III.   The Tribal Mobility Fund should be a separate track that is a significant percentage of the total Mobility Fund.

We strongly support a separate Tribal Mobility Fund track. Because of economic factors, it is unlikely tribal lands would receive much benefit if they are simply lumped together in a larger pool of Mobility Fund applications determined by a reverse-auction mechanism. If the market supported 3G or better mobile technology in Indian country, there would already be coverage. However, as FCC Chairman Genachowski noted in his March 2010 remarks to the NCAI, Indian country has only a 65% adoption rate for any telephone service.

Even allocating the entire Mobility Fund pool of $100 to $300 million to tribal lands, it would not be possible to meet the dire needs of Indian country. But to begin to have a significant impact on Indian country, a substantial portion of those funds should be made available for a Tribal Mobility Fund. Consistent with the comments submitted by NCAI, we believe that at minimum, the FCC should set aside a third of the Fund to support the tribal track.

IV.   The proposed reverse-auction mechanism should be replaced in the Tribal Mobility Fund track with an alternative process which incorporates factors that will help address Indian country needs.

While a separate Tribal Mobility Fund, properly funded and tailored to Indian country's needs, could provide considerable benefits, we join with other commenters in stressing that a reverse-auction mechanism will not achieve the desired goals in Indian country. The reverse-auction method is based on a lowest-cost-per-user metric. This would undoubtedly lead to providing funding only for proposals that merely add to service at the margins or edges of existing service. However, many tribal areas – like Standing Rock – are isolated and sparsely populated, requiring a significant cost investment per user to approach anything close to full coverage.

In proposing that tribes receive additional "priority units" to allocate to certain census blocks, the FCC itself has acknowledged that a purely market-driven reverse auction approach would not be workable for Indian country, and that more needs to be done to provide a viable approach. While we agree with that premise, we are deeply concerned that a "priority units" approach – however implemented in practice – would not be sufficient to alleviate the basic mismatch between a reverse-auction approach and the needs of Indian country. Since the FCC is already proposing to significantly alter the auction-based approach for Indian country, we suggest that the FCC should more definitively acknowledge a range of factors that sets Indian country apart and should use those factors to allocate Tribal Mobility Funds through an alternative approach. These factors include the current telecommunications network coverage, distance to emergency and health services, poverty levels, and more. Along these lines, a provider's proposal should receive a score using the following factors:

- A factor based on current landline telephone, mobile, and broadband penetration in the proposed reservation coverage area – so that the lower the percentage of current penetration of these networks, the higher the score;

- A factor based on the increase in total reservation population coverage – so that the greater the proposal's increase in percentage of population covered, the higher the score;

- A factor based on the increase in geographic coverage – so that the greater the proposal's increase in total percentage of reservation covered, the higher the score;

- A factor that increases the score by a certain number of points if the proposal would "close the loop" by reaching 100% coverage in a given reservation (by population, by geography, or both);

- A factor based on poverty rates in the proposed coverage area – so that the greater the poverty rate, the higher the score;

- A factor based on average travel distance of the residents in the proposed coverage area to health care, emergency services, and other governmental services – so that the greater the distance to these essential services, the higher the score;

- A factor based on whether the proposed coverage area includes so-called "anchor" institutions, such as a tribal government headquarters office, emergency services, schools, hospitals, and clinics – so that the inclusion of one or more anchor institutions increases the score by a certain number of points; and

- A factor that increases the score by a certain number of points if the provider is tribally-owned or tribally-controlled.

There may be other factors that the FCC should include in reviewing the proposals in this process, as well. This is not meant to be an exhaustive list, but rather to highlight some of the most important factors for Indian country. In addition to these factors, we recognize that per-unit pricing will also need to be considered, to ensure that a proposal's price is reasonable. But giving primary weight to the factors above will enable FCC to allocate Tribal Mobility Funds where the need is greatest, and where those funds will do the most good.

Under this alternative, the FCC would review all proposals and rank them by total score. The FCC would fund each of the highest-scoring proposals until the Tribal set-aside from the Mobility Fund is fully allocated.

Utilizing a process that starts with these factors first, rather than starting with a lowest-cost-per-user metric, would be a more effective means of accomplishing the FCC's goal of increasing mobile coverage in ways that truly help Indian country. Consistent with the FCC's trust responsibility to the tribes, this proposed method of allocation of Tribal Mobility Funds will enhance the overall benefit to Indian country – by providing funding targeted to telecommunications services that will serve those tribal lands with the greatest needs in terms of health, education, economic development, and other critical measures.

V.   Formal engagement with an affected tribe should be required from the outset.

Providers should certainly be required to engage formally with tribal governments in planning and preparing proposals for funding. This is the only way to ensure that the proposal is consistent with the affected tribe's plans and policy goals, and that it will serve the interests of those who are currently under-served on Indian lands.

A. A tribal resolution of support should be a required part of the provider's application for any project serving part or all of a reservation.

The most straightforward and effective way for the FCC to ensure that providers formally engage with a tribe in the proposed service area would be to require that providers include a tribal resolution of support for any proposed project affecting that tribe's reservation. This will ensure that tribal engagement happens early in the process, and that no tribe will be taken by surprise. It also ensures that the burden of notifying the relevant tribe and tailoring the proposal to meet tribal goals or concerns is placed on the provider, rather than on the tribe or the FCC. The FCC should consider proposals incomplete and ineligible if they lack a supporting tribal resolution. As a pre-requisite to participation in any process for allocating a Tribal Mobility Fund, a supporting tribal resolution should be listed as a necessary component of the "short-form" application that the FCC issues for the Mobility Fund.

The FCC could also require a provider to submit with the "long form" a certification of engagement which certifies the provider has engaged the relevant tribe on all of the key issues that FCC has properly identified – needs assessment, deployment planning, inclusion of tribal anchor institutions and communities, feasibility and sustainability, cultural sensitivity, rights-of-way, permitting, project siting, cultural preservation, and tribal business license and permit compliance.

  B. <u>Tribal consent is especially important in the case of a tribally-owned or tribally-controlled provider</u>.

As discussed above, the SRST is in a unique position because of the work that the Tribe and the Tribally-owned SRTI have already done to begin providing mobile service in 2010. Based on a long history of inadequate mobile service on the Reservation, and the growing needs of the Reservation community, the Tribe made a careful choice to launch SRTI and entered into significant financing arrangements to support the venture. If another provider was able to gain Mobility Funds to provide service in portions of the Standing Rock Indian Reservation now without the Tribe's support or approval, the Tribe's goals and sovereign policy choices could be undermined. This would be equally true for other tribes with a tribally-owned or -controlled telecom provider serving (or planning to serve) their reservations. Requiring a supportive tribal resolution in the provider's application would avoid this potential problem.

VI. **<u>The FCC should not exclude or penalize tribes and tribal providers that have already taken their own initiative to add mobile coverage to under-served areas</u>.**

  A. <u>Tribes with newly-launched networks should be allowed to participate.</u>

Faced with the lack of private telecommunications infrastructure development, some tribes – like the SRST – took it upon themselves to start building up a mobile network in recent years. As mentioned above, with the support of the SRST, SRTI was able to first launch its

mobile network service on the Standing Rock Reservation just last year, in 2010. The FCC

should make sure that tribes in this posture – with very recent investment in mobile network

infrastructure to serve their reservations – are allowed to apply for Tribal Mobility Funds in

connection with these new projects, and any expansions thereto. Allowing these newly-

constructed and newly-launched infrastructure projects to be eligible for Mobility Funds would

meet the FCC's goal of ensuring viable and sustainable expansion of mobile networks to under-

served areas, as more local users become able to join the new networks. If these projects were

not eligible, tribes or tribally-owned providers that have recently taken on the burden of

launching networks to expand to under-served areas just before the launch of the Mobility Fund

would be penalized by their own initiative and success, which would be counter to the FCC's

purposes here.

B. <u>Tribal entities that have applied for, but not yet received, ETC designation should be
eligible to participate in the Mobility Fund.</u>

We agree with the NCAI that entities with pending ETC applications should be allowed

to participate in the Mobility Fund. *See* NCAI Comments, at 12 (Dec. 16, 2010). As described

above, SRTI has been designated as an ETC for a portion of the Reservation, and has a pending

application for other portions. There may be other entities in a similar position in Indian country.

Given the prolonged time frame for the ETC designation process, and the importance of

encouraging tribally-owned and tribally-controlled providers to serve tribal lands, it would be

unfair to exclude such providers with pending ETC designations from Tribal Mobility Fund

eligibility.   Indeed, the launch of the Mobility Fund – and especially a Tribal Mobility Fund

track – could provide the impetus to encourage and expedite tribal ETC applications.

VII. **The FCC should provide technical assistance in submitting proposals for the Mobility Fund.**

In order to help tribes and tribally-owned or -controlled entities have access to the Mobility Fund on the same footing as more established providers, the FCC should ensure that its staff and resources are available to provide technical assistance in preparing and submitting proposal packages.

VIII. **Conclusion**

We support the FCC's efforts to provide support in bringing modern telecommunications service to our communities, and we encourage the FCC to continue to take these and other tribal concerns and comments into account in further refining the Mobility Fund and, most significantly, the separate Tribal Mobility Fund.

We look forward to working with you on this and other important FCC initiatives regarding Indian country.

Respectfully submitted,

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Filed Electronically on May 4, 2011